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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/510,664	10/07/2004	Mehmet Nezir Gencer	1920-100US	1822
25881	7590	03/27/2006	EXAMINER	
EPSTEIN DRANGEL BAZERMAN & JAMES, LLP			RODRIGUEZ, JOSEPH C	
60 EAST 42ND STREET			ART UNIT	PAPER NUMBER
SUITE 820				
NEW YORK, NY 10165			3653	

DATE MAILED: 03/27/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	10/510,664	GENCER, MEHMET NEZIR
	Examiner Joseph C. Rodriguez	Art Unit 3653

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 17 January 2006.
 2a) This action is FINAL. 2b) This action is non-final.
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-9 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
 5) Claim(s) _____ is/are allowed.
 6) Claim(s) 1-9 is/are rejected.
 7) Claim(s) _____ is/are objected to.
 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
 10) The drawing(s) filed on 17 January 2006 is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ . |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____ . |

Final Rejection

Applicant's arguments filed 1/17/06 have been fully considered but they are not persuasive for reasons detailed below.

The 35 U.S.C. 112 rejections are maintained or modified as follows:

Claim Rejections - 35 USC § 112

The rejections under the first paragraph of 35 U.S.C. 112 have been withdrawn.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-9 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claims 1-9, the features of the secondary crusher, paddle box and vertical elevator remain indefinite. In response to Examiner's request for clarification, Applicant has submitted an amended figure 6 showing the secondary crusher and vertical elevator as separate structures from the aggregate storing and classifying mechanism. This is inconsistent with the claim 1 language that states that said mechanism is a closed form structure and includes the elevator and secondary crusher. Thus, the "the mechanism being associated" language of claim 1 remains unclear as it is uncertain if Applicant is claiming a system comprising multiple closed form units, or otherwise. Amended figure 6 is also inconsistent with claim 9 that states that "the

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crusher which is covered with the paddle box". Thus, it remains unclear how the secondary crusher can be covered by a paddle box, yet be designated as a wholly separate structure in figure 6. That is, it is unclear how the crusher can be both covered by the paddle box, which is directly above the screen and part of the mechanism body, and can also be separated from the mechanism body by a vertical elevator, or how the paddle box is constructed.

Claim 7 recites the limitation "said paddle boxes". There is insufficient antecedent basis for this limitation in the claim.

Further, claim 9 recites the limitations "the crusher" (In. 2), "the paddle box" (In. 3), "the secondary crusher" (In. 7-8), "the closed vertical elevator" (In. 9), and "the mechanism" (In. 16). There is insufficient antecedent basis for these limitations in the claim.

Examiner again requests clarification. In the interim, the device claims, as best understood by Examiner, have been interpreted as set forth below. The method claim is so indefinite as to not allow a proper search and comparison with relevant prior art.

The prior art rejections are maintained or modified as follows:

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 3, 5, 6 are rejected under 35 U.S.C. 102(b) as being anticipated by Milstead (US 5,215,372)(Fig. 1-6).

Milstead (Fig. 1-6) teaches an aggregate storing and classifying mechanism for production of asphalt in plants, said mechanism having a closed form structure and comprising

a body (near 14), a screen (within vibrating screen assembly 16) arranged to the upper side of said body, a plurality of foot means for holding said body (Fig. 1, 2),

a plurality of discharge mouths (Fig. 3, mouths near 23) and discharge covers (Fig. 5, cover 26 operable with piston 28) for discharging the aggregate material from said body and feeding the aggregate material to conveyors (truck) placed under said body (Fig. 2; col. 4, ln. 13-52), a paddle box (box 16),

said mechanism comprising a plurality of sections (directly above 23 in fig. 2) arranged in said body for storing aggregate material of different gradation levels (col. 3, ln. 28-36);

corridor means and channel means arranged in said body for distributing the aggregate in said body homogenously (divider plates and channeling means shown in fig. 2, 3). Further, Applicant is respectfully reminded that claim language consisting of functional language and/or intended use phrasing is given little, if any, patentable weight as the apparatus must merely be capable of functioning, or being used, as claimed. See MPEP 2112.02, 2114. Here, the mechanism of Milstead is certainly capable of *being associated with an elevator for conveying the aggregate material provided by a*

secondary crusher to said screen, wherein said elevator is associated with a filter system.

Allowable Subject Matter

Claims 7-8 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Examiner has maintained the prior art rejections, statutory rejections and drawing objections as previously stated and as modified above. Applicant's amendment necessitated any new grounds of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a). The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Conclusion

Any references not explicitly discussed above but made of record are considered relevant to the prosecution of the instant application.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Joseph C Rodriguez** whose telephone number is **571-272-6942** (M-F, 9 am – 6 pm, EST).

The Official fax phone number for the organization where this application or proceeding is assigned is **571-273-8300**.

The examiner's UNOFFICIAL Personal fax number is **571-273-6942**.

Further, information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system.

Status information for published applications may be obtained from either Private PMR or Public PAIR. Status information for unpublished applications is available through Private PMR only.

For more information about the PAIR system, see

<http://pair-direct.uspto.gov>

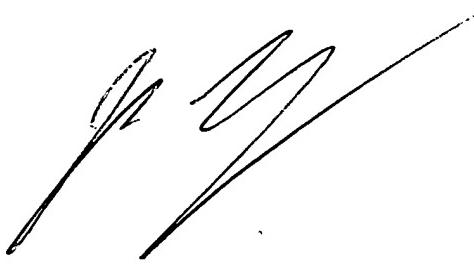
Should you have questions on access to the Private PMR system, contact the Electronic Business Center (EBC) at **866-217-9197** (Toll Free).

Alternatively, inquiries of a general nature or relating to the status of this application or proceeding can also be directed to the **Receptionist** whose telephone number is **571-272-6584** or to the Supervisory Examiner, Kathy Matecki, **571-272-6951**.

Signed by Examiner Joseph Rodriguez

jcr

March 21, 2006

A handwritten signature in black ink, appearing to read "Joseph Rodriguez". The signature is written in a cursive style with a long, sweeping horizontal line extending from the left.